

No. 89-863

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Supreme Court, U.S.

FILED

DEC 22 1989

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

SHARON A. GRANIER, JR.
CLERK

MYRON HARPER AND JANE HARPER, *Petitioners,*

v.

FEDERAL LAND BANK OF SPOKANE et al., *Respondents.*

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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Federal Land Bank of
Spokane, Willamette
Production Credit
Association, and
Kenneth P. Krueger

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LISTING PURSUANT TO COURT RULE 28.1

Respondent Federal Land Bank of Spokane, a federally chartered entity, was a predecessor of the current Farm Credit Bank of Spokane, which was created by merger of the Federal Land Bank and the Federal Intermediate Credit Bank of Spokane. The Farm Credit Bank of Spokane provides loans to borrowers in the Twelfth Farm Credit District (Oregon, Washington, Idaho, Montana, and Alaska).

Willamette Production Credit Association has been liquidated. Its assets have been transferred to Farm Credit Bank of Spokane, as successor to the Federal Intermediate Credit Bank.

The Farm Credit Bank of Spokane, like its predecessor entities, was established under the Farm Credit Act of 1971, as amended.



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Petitioners Myson S. and Jane Harper filed their petition for certiorari with this Court on November 22, 1989. They noted an apparent conflict between the disposition of this case by the Ninth Circuit court of Appeals (*Harper v. Federal Land Bank of Spokane*, 878 F2d 1172 (9th Cir 1989) (rehearing and hearing en banc denied)); and that of the Eighth Circuit Court of Appeals in *Zajac v. Federal Land Bank of St. Paul*, 887 F2d 844 (8th Cir 1989). The court in *Harper* found no private right of action implicit in the Agricultural Credit Act of 1987 (Pub L No 100-233, 101 Stat 1568) (878 F2d at 1173, 1177). In *Zajac*, the Eighth Circuit did discern an implied right to sue (887 F2d at 856). Petitioners then stated, "[W]here there is both a conflict among courts of appeal and an important legal question, this court has exercised its discretion and granted review by writ of certiorari" (petition p 7).

The Federal Land Bank of St. Paul suggested the appropriateness of a rehearing en banc of *Zajac*. By order of December 7, 1989 (see Appendix to this brief), the Eighth Circuit granted rehearing en banc and expressly vacated the earlier panel opinion and judgment.

As to the only issue which petitioners bring before this Court, any conflict that existed between the circuits has dissolved. The Court should deny the petition or defer ruling on the petition until the Eighth Circuit Court of Appeals has handed down its en banc decision in *Zajac*.

Respectfully submitted,

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Federal Land Bank of
Spokane, Willamette
Production Credit
Association, and
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December 22, 1989

APPENDIX

FOR THE EIGHTH CIRCUIT

Appellee.

Appeal from the
United States District
Court for the District of
North Dakota

/s/ Robert D. St. Vrain.
Clerk, U.S. Court of Appeals, Eighth Circuit.